

FCC MAIL SECTION

Federal Communications Commission

DA 99-899

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DISPATCHED BY
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 99-167
Table of Allotments,)	RM-9391
FM Broadcast Stations.)	
(Mount Olive and Staunton, Illinois))	

NOTICE OF PROPOSED RULE MAKING

Adopted: May 5, 1999;

Released: May 14, 1999

Comment Date: July 6, 1999

Reply Comment Date: July 21, 1999

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Talley Broadcasting Corporation ("petitioner"), permittee of Station WSTN-FM, Channel 287A, Mount Olive, Illinois, proposing the reallocation of Channel 287A from Mount Olive to Staunton, Illinois, and the modification of Station WSTN-FM's construction permit accordingly. Petitioner states its intention to apply for the channel, if reallocated to Staunton.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). In support of its proposal, petitioner states that although the allotment would provide a first local service to either community, Mount Olive has a population of 2,126¹ persons, whereas Staunton has a population of 4,806 persons, more than twice the population of Mount Olive. Petitioner further states that the reallocation would not result in the removal of an existing service since the station is unbuilt, citing, Bagdad and Chino Valley, Arizona 61 F.R. 60043 (1996); Sanibel and San Carlos, Florida, 10 FCC Rcd 7215 (1995); Pawley's Island and Atlantic Beach, South Carolina, 8 FCC Rcd 8657 (1993); Glencoe and LeSueur, Minnesota, 7 FCC Rcd 7651 (1992)0. Petitioner asserts

¹All population figures are taken from the 1990 U.S. Census.

that the reallocation will result in a preferential arrangement of allotments since it would conform with FM allotment priorities by providing a first local service to Staunton, the larger of the two communities.²

3. In further support of the reallocation, petitioner advises that Staunton is an incorporated community with an elected mayor and aldermanic form of government. Staunton has its own web site, police and fire-fighting forces, hospital, library, Chamber of Commerce, school district, churches, banks, and a substantial number of local businesses. It also has its own post office and zip code. Lastly, Staunton is not located in or near an urbanized area.

4. We believe that the proposal warrants consideration since the reallocation of Channel 287A to Staunton, Illinois, could provide the community with its first local aural transmission service. Since the station is unbuilt, the reallocation would not result in the removal of an existing service at Mount Olive. Moreover, since petitioner does not seek to change its transmitter site, there will be no potential gain or loss areas. An engineering analysis has determined that Channel 287A can be reallocated to Staunton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's authorized construction permit site.³ As requested, we shall propose to modify Station WSTN-FM's construction permit to specify operation on Channel 287A at Staunton, Illinois, as its new community of license. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 287A at Staunton, Illinois.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Mount Olive, Illinois	287A	---
Staunton, Illinois	---	287A

²The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight given to priorities (2) and (3)]. See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

³The coordinates for Channel 287A at Staunton are 39-02-37 North Latitude and 89-44-56 West Longitude.

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **July 6, 1999**, and reply comments on or before **July 21, 1999**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John J. McVeigh, Esq.
12101 Blue Paper Trail
Columbia, Maryland 21044-2787
(Counsel for Petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation

and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be

accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW A-325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C.